

**DISCLAIMER**

*This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).*

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 10, 2000

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE980812

Ex Parte: In the matter of  
establishing interim rules for retail  
access pilot programs

**Order Inviting Comments on Retail Access Pilot Program Rules**

This case originated in March of 1998, when the Commission initiated a proceeding to establish an investigation concerning the restructuring of the electric utility industry in the Commonwealth.<sup>1</sup> The Commission required all investor-owned utilities in Virginia and Old Dominion Electric Cooperative to provide information and perform certain activities that would assist the Commission in moving forward in the evolving world of electric utility restructuring. In that proceeding, the Commission directed Virginia Electric and Power Company ("Virginia Power") and American Electric Power-Virginia ("AEP-Virginia") to begin work toward developing and implementing at least one retail access pilot program in their respective service territories. Virginia Power and AEP-Virginia filed pilot program applications, which currently are before the Commission in Case No. PUE980813 and Case No. PUE980814, respectively.

In a related matter, upon approving a pilot program for Columbia Gas of Virginia, the Commission determined that a task force should be set up to develop a generic code of conduct

---

<sup>1</sup> *Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of requiring reports and actions related to independent system operators, regional power exchanges and retail access pilot programs*, Case No. PUE980138, 1998 S.C.C. Ann. Rept. 402.

applicable to retail natural gas unbundling programs.<sup>2</sup> The Commission Staff later filed a motion expressing a similar need for a code of conduct to govern retail access pilot programs for electric utilities and stated that there would be advantages in developing codes of conduct for the natural gas and electric utilities concurrently.

The Commission agreed with Staff's suggestion and established this proceeding in which it directed Staff to select and lead a task force to consider and, by March 9, 1999, propose, rules that would govern issues common to both the natural gas and electric retail access pilot programs.<sup>3</sup> In addition, the Commission established an evidentiary proceeding in which interested persons and members of the public would have an opportunity to comment on the proposed rules, and directed that a Hearing Examiner be assigned to conduct all further proceedings in this matter.

The task force filed its report ("Task Force Report") on March 9, 1999. The Task Force Report set forth proposed rules addressing standards of conduct applicable to: (i) all competitive service providers; (ii) local distribution companies and their affiliated competitive service providers; and (iii) licensing and filing requirements for retail access pilot programs. The task force participants attempted to develop proposed rules that represented a broad consensus. When the participants could not agree on an issue, they attempted to reach a compromise that was generally acceptable.

After the task force finished its work, the case entered the formal phase of the proceeding and notices of participation were filed by 30 parties. Most of these parties had participated on the task force.

---

<sup>2</sup> *Application of Commonwealth Gas Services, Inc. For general increase in rates and approval of performance-based rate regulation methodology pursuant to Va. Code § 56-235.6*, Case No. PUE970455, 1997 S.C.C. Ann. Rept. 417 ("Columbia Gas").

<sup>3</sup> *Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of establishing interim rules for retail access pilot programs*, Case No. PUE980812, Doc. Control No. 981210154 (Dec. 3, 1998).

On or about April 9, 1999, twenty parties filed comments on the task force's proposed rules.<sup>4</sup> Generally, the participants supported the task force's proposed rules, although a number of them suggested certain modifications or clarifications. The Staff filed comments and a report that proposed a number of modifications to the task force rules and several new rules. The Staff stated that its primary objective was to develop rules that would promote an orderly and well-functioning market place while, at the same time, providing consumer protections by specifying certain requirements and obligations to guide the behavior of participants in the pilots.

In response to Staff's comments on the task force rules, on April 16, 1999, twelve of the participants jointly filed a motion requesting a continuance of the hearing to prepare rebuttal testimony and/or comments to Staff's modifications. On April 16, 1999, Chief Hearing Examiner Deborah V. Ellenberg granted that motion, extending the time for the filing of rebuttal comments until April 26, 1999. The hearing scheduled for April 19, 1999, was retained for the purpose of receiving public comment and the evidentiary hearing was continued until May 3, 1999.

On or about April 26, 1999, thirteen participants filed rebuttal comments on the other participants' comments and Staff's comments and report. Two public witnesses appeared at the first hearing that was convened on April 19, 1999, and the hearing was concluded on May 3, 1999.

On August 6, 1999, the Chief Hearing Examiner issued her Report. The Hearing Examiner commended the task force participants for their cooperative spirit in developing the proposed rules. She noted the support shown by the task force participants for the rules they had proposed and the disagreement with the magnitude of Staff's proposed changes. The Hearing Examiner determined that the product of the task force should be accorded great weight and modified only when necessary. The Hearing Examiner therefore recommended that the

---

<sup>4</sup> The participants' positions are succinctly summarized in the Hearing Examiner's August 6, 1999, Report at pp. 4-13.

Commission, by and large, adopt the task force's proposed rules, with certain limited modifications and clarifications.

On August 27, 1999, comments were filed on the Chief Hearing Examiner's Report by Appalachian Power Company, d/b/a American Electric Power-VA, Columbia Gas of Virginia, Inc., Columbia Energy Services Corporation and Enron Energy Services, Inc., the Virginia Electric Cooperatives, Roanoke Gas Company, Utility.com, Inc., Virginia Electric and Power Company, Virginia Propane Gas Association, Virginia Retail Merchants Association, Washington Gas Light Company, Washington Gas Energy Services, Inc., and the Commission's Staff. Certain of the comments recommended that the proposed rules be adopted without change, and others recommended changes or clarifications.

NOW THE COMMISSION, upon consideration of the record in this proceeding, the Hearing Examiner's Report, the comments thereto, and the applicable statutes and rules, has determined that the rules recommended by the Hearing Examiner should be revised and further considered with the benefit of additional written comments by the parties.

We agree with the concepts identified by the task force and the Hearing Examiner, and each of these concepts is addressed in the revised rules attached to this Order. While we appreciate the collaborative effort that went into the work of the task force and its recommendations, we have a number of concerns with the rules as proposed by the Hearing Examiner. These concerns, reflected in the changes and additions incorporated in the attached rules, include not only specific substantive issues, but also the lack of detail in many of the rules, the organization of the rules, the lack of definitions as part of the rules, and the need to address aggregators to a greater extent.

We recognize that changes to, or exceptions from, any rules we adopt may be needed as customer choice unfolds in Virginia. The rules adopted in this proceeding will be subject to further review before full customer choice begins. If the pilot programs or other circumstances show that changes are needed, they can be made. Further, the attached rules provide for waivers

that may be considered as part of a specific pilot program or may be requested by an entity that is, or desires to be, part of a pilot program.

We believe our revisions have enhanced the Hearing Examiner's proposed rules. Further, we find that it is appropriate to give the parties and the Staff an opportunity to file written comments on the revised rules prior to making a final determination. Once we have received and reviewed any comments that may be filed, the Commission will issue a final order adopting rules for retail access pilot programs as promptly as possible.

Accordingly, IT IS ORDERED that:

- (1) On or before February 24, 2000, the Staff of the Commission and any party may file written comments on the attached rules.
- (2) This case is continued generally.

## CHAPTER 311

### INTERIM RULES GOVERNING ELECTRIC AND NATURAL GAS RETAIL ACCESS PILOT PROGRAMS

#### **20 VAC 5-311-10. Definitions.**

"Affiliated competitive service provider" means a competitive service provider that is a separate legal entity that controls, is controlled by, or is under common control of, a local distribution company or its parent. For the purpose of this chapter, any unit or division created by a local distribution company for the purpose of providing competitive energy services shall be treated as an affiliated competitive service provider and shall be subject to the same rules and regulations.

"Aggregator" means a person who, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or natural gas, or both, or (ii) offers to arrange for, or arranges for, the purchase of electric energy or natural gas, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585 of the Code of Virginia; (v) conducting business as a competitive service provider licensed under 20 VAC 5-311-50; and (vi) engaging in actions as a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy or natural gas, or both, for consumption by such retail customers. An aggregator may act in one or both of the following capacities:

"Competitive service provider aggregator" means an aggregator who represents one or more competitive service providers and receives compensation for its services from the competitive service provider or providers.

"Buyer aggregator" means an aggregator who represents two or more retail customers or prospective retail customers, and who may be compensated for such services by the retail customers, but does not receive compensation from a competitive service provider.

"Commencement of the pilot program" means the date established by the State Corporation Commission for the beginning of each pilot program.

"Competitive energy service" means the retail sale of electricity or natural gas, or both, as part of a retail pilot program by an entity other than the local distribution company as a regulated utility.

"Competitive service provider" means a person who sells or offers to sell a competitive energy service. This term includes affiliated competitive service providers, as defined above, but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase a competitive energy service from any licensed competitive service provider seeking to sell such services to that customer.

"Electronic Data Interchange" (EDI) means computer-to-computer exchange of business information using common standards for high volume electronic transactions.

"Local Distribution Company" means an entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for the transportation and delivery of electricity or natural gas to the end-user.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority or other political subdivision of the Commonwealth.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission that owns or operates, or both, the transmission facilities required for the delivery of electricity or natural gas to the local distribution company or end-user.

## **20 VAC 5-311-20. Competitive service providers.**

A. Each competitive service provider shall comply with the following requirements with respect to its relationship with its retail customers:

1. A competitive service provider shall, in any advertisements or marketing materials, provide accurate, understandable information, including information regarding pricing, terms and conditions.
2. Advertising and marketing materials regarding price or cost shall include, in separate paragraphs, boxes or charts: (i) an estimated total annual bill for a residential customer who uses, on a monthly basis, 1,000 kWh of electricity or 7.5 Mcf or 75 therms of natural gas, including all fees and minimum or fixed charges, but exclusive of any non-recurring financial or non-financial incentives; (ii) the total average price per kWh, Mcf, or therm based on the annual bill; (iii) other information, if any, that will allow prospective customers to reasonably compare the full price of service if the competitive energy service is purchased from the competitive service provider to the full price of service

charged by the local distribution company; (iv) the value of any non-financial incentives or non-recurring financial incentives; (v) a statement regarding provisions for termination by the customer and by the competitive service provider; and (vi) a statement of any minimum contract terms, minimum usage requirements, any required deposit, any applicable fees such as start-up fees or cancellation fees, and any minimum or fixed charges.

3. A competitive service provider, in arranging to provide service to a new customer, shall comply with the following requirements:

a. A competitive service provider shall enroll a customer only after the customer has authorized such enrollment. The competitive service provider shall provide for verification of a customer's enrollment in one or more of the following ways: (i) a written agreement signed by the customer; (ii) a written statement by an independent third party who witnessed or heard the customer's verbal commitments; (iii) a tape recording of the customer's verbal commitment; or (iv) electronic data exchange, provided that the competitive service provider can show that the electronic transmittal of a customer's authorization originated with the customer. At a minimum such verification shall contain the customer's name and address; the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or cancellation fees.

Verification of authorization shall be retained for at least 12 months and must be provided within five business days upon request by the customer or the staff of the State Corporation Commission. These procedures are not required where an existing customer moves to a new address and wishes to continue with the same provider, provided that the competitive service provider is licensed to provide service to the customer's new location.

b. Upon obtaining the customer's authorization pursuant to the subsection above and after the rescission period of three business days pursuant to 20 VAC 5-311-20 A 6, the competitive service provider shall send an enrollment request to the local distribution company consistent with the terms and conditions of the local distribution company's tariff applicable to pilot programs. The local distribution company shall, within one business day, mail notification to the customer advising of the enrollment request and the date service commences. The customer shall have 10 calendar days from the date notification is mailed to advise the local distribution company of an unauthorized enrollment. See 20 VAC 5-311-30 B 4 for related provision.

c. The competitive service provider shall commence service to a customer on the date of the first regularly scheduled meter reading that occurs at least 15 calendar days after the date notification is mailed to the customer by the local distribution company. The competitive service provider may request and pay for a special meter reading, in which case the enrollment may become effective on the date of the special meter reading; however, a special meter reading shall not occur until at



least 15 calendar days after the date notification is mailed by the local distribution company.

4. A competitive service provider shall provide to each customer a written contract, which may be hand-delivered, mailed, or electronically transmitted. A customer or prospective customer shall be deemed to have received a service contract on the date the contract is hand-delivered or three business days after the date the contract was mailed or electronically transmitted.

5. At a minimum, all customer service contracts shall include: (i) the price or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated and any other pertinent pricing terms; (ii) the length of the service contract; (iii) provisions for termination by the customer and by the competitive service provider; (iv) a statement of any minimum contract terms, minimum usage requirements, minimum or fixed charges, and any required deposit; (v) any applicable fees including, but not limited to start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds; (vi) a description of the dispute resolution procedures required pursuant to 20 VAC 5-311-20 A 10; (vii) a statement informing a prospective customer of the right to withdraw from the contract, without incurring any penalty or other obligations, within three business days commencing with the customer's receipt of a written contract; and (viii) in a conspicuous place, confirmation of the customer's request for enrollment and the approximate date the customer's service will commence as determined pursuant to 20 VAC 5-311-20 A 3 c.

6. A competitive service provider shall provide a period of three business days during which a customer may withdraw from the contract without incurring any penalty or other obligations. Such period shall commence with the customer's receipt of a written contract. See 20 VAC 5-311-20 A 4 for related provision.

7. A competitive service provider claiming its offerings possess unusual or special attributes shall maintain documentation to substantiate any such claims. Such information may be made generally available through electronic means, and a written explanation shall be provided promptly upon request of any customer, prospective customer, competitive service provider, aggregator, local distribution company, or the staff of the State Corporation Commission.

8. In the event a competitive service provider collects security deposits or prepayments, such funds shall be held in escrow in Virginia, and the competitive service provider shall provide to the State Corporation Commission and the customer the name and address of the entity holding such deposits or prepayments.

9. A competitive service provider requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer's estimated liability for no more than two months' purchase of energy services from the competitive service provider by that customer.

10. A competitive service provider shall have in place explicit dispute resolution procedures and clearly identify the addresses and phone numbers of persons authorized to assist customers when they have a complaint.

11. A competitive service provider shall furnish to customers a 24-hour toll-free telephone number: (i) for customer inquiries during normal business hours regarding services provided by the competitive service provider, and (ii) that directs the customer where to call in a service emergency. The 24-hour toll-free telephone number shall be stated on all customer billing statements.

12. A competitive service provider shall adequately safeguard customer information, including payment history, unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by applicable federal and state statutes.

13. A competitive service provider may change the pricing, terms and conditions of its service contract only pursuant to the terms of the service contract and subject to the provisions of this chapter, and upon at least 30 days' written notice to the customer or customers. Such notice shall be set forth in a conspicuous written statement entitled "Notice of New Terms." The customer may terminate the contract within said 30 day period by providing notice to the competitive service provider.

14. A competitive service provider may include provisions in its service contracts that provide for automatic contract renewal for a total period of no more than two years from the date of the initial enrollment, provided that, in any event, the contract shall provide that it will terminate if the competitive service provider's license expires or is suspended or revoked. The competitive service provider shall notify its customers at least 45 days in advance prior to the termination or renewal date of the service contract.

15. In the event that a competitive service provider's services are terminated for any reason other than by a customer's decision to transfer to a different supplier, the competitive service provider shall send written notification of such termination to the customer at least 30 days prior to the next meter read date that service to the customer will be terminated. See Rules 20 VAC 5-311-20 B 7, 20 VAC 5-311-30 A 5, and 20 VAC 5-311-30 B 5 for related provisions.

B. Each competitive service provider shall comply with the following rules with respect to its relationship with the local distribution companies and transmission providers:

1. A competitive service provider shall submit to the local distribution company the full name of the competitive service provider, the type of entity (e.g., partnership or corporation), physical street and mailing addresses, and the names, telephone numbers, and e-mail addresses of appropriate contact persons, including a 24-hour emergency contact telephone number and emergency contact person, and the name, title, and address of registered agent in Virginia for service of process.

2. A competitive service provider shall furnish the local distribution company and the transmission provider proof of licensure to provide competitive energy services in the Commonwealth from the State Corporation Commission.

3. A competitive service provider shall adhere to all requirements of schedules, terms, and conditions of service under the rate schedules and tariffs, approved by the State Corporation Commission or the Federal Energy Regulatory Commission, of the local distribution company and the transmission provider.

4. a. A competitive service provider selling electricity or natural gas, or both, at retail shall:

(1) procure sufficient electric generation and transmission service or sufficient natural gas delivery capability, or both, to serve the requirements of its firm customers;

(2) abide by any applicable rule or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, the Federal Energy Regulatory Commission, and any other entity identified as such by the State Corporation Commission;

(3) comply with any obligations that the State Corporation Commission may impose to ensure sufficient availability of capacity; and

(4) comply with generally accepted technical protocols applicable to particular competitive services as approved by the State Corporation Commission.

b. In the event of a failure to fulfill the obligations set forth in the subsection above, the competitive service provider shall be responsible for penalties as authorized or required by the regulator with jurisdiction over the matter. The imposition of penalties shall not preclude the State Corporation Commission from taking any further actions that it may deem necessary.

5. An affiliated competitive service provider may use the name or logo of its affiliated local distribution company in advertising and solicitation materials unless the State Corporation Commission determines that such use is misleading. An affiliated competitive service provider desiring to make such use shall submit the advertising and solicitation materials to the State Corporation Commission no later than 30 days before commencing such use. Any such use shall be accompanied by a disclaimer clearly disclosing that (i) the affiliated competitive service provider is not the same company as the local distribution company; (ii) the rates and products offered by the affiliated competitive service provider are not regulated by the State Corporation Commission; and (iii) the safety, reliability, and cost of distribution service received by customers of the affiliated competitive service provider will be no different than that received by

customers of a competitive service provider that is not affiliated with the local distribution company.

6. An affiliated competitive service provider shall operate independently of its affiliated local distribution company and shall abide by the following prohibitions with respect to any competitive service it offers in the certificated service territory of the affiliated local distribution company:

a. An affiliated competitive service provider shall not allow its employees who have responsibility for (i) the operations or reliability functions of the electric generation or natural gas supply system and (ii) customer service, accounting, or billing to engage in similar activities for or on behalf of its affiliated local distribution company.

b. An affiliated competitive service provider shall not obtain goods and services from a third-party entity if that entity allows its same employees to provide services relating to (i) the operations or reliability functions of the electric generation or natural gas supply system or (ii) customer services, accounting, or billing for both the local distribution company and its affiliated competitive service provider.

c. An affiliated competitive service provider shall maintain separate offices from its affiliated local distribution company. If an affiliated competitive service provider believes that it is not practicable or is prohibitively expensive to separate its offices from the offices of its affiliated local distribution company, the affiliated competitive service provider shall file a request for exemption no later than 120 days prior to the day it proposes to begin to provide service, accompanied by a description of what actions it has taken to achieve and ensure separation.

d. An affiliated competitive service provider shall take steps necessary to ensure that any of its employees who was an employee of the affiliated local distribution company shall not provide the affiliated competitive service provider with proprietary property or information of the affiliated local distribution company, or use proprietary property or information of the affiliated local distribution company on behalf of the affiliated competitive service provider.

e. An affiliated competitive service provider shall document each occasion that an employee of its affiliated local distribution company becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated local distribution company, and shall file a quarterly report with the State Corporation Commission identifying each such occasion. Such report shall include, if applicable, a description of the steps taken by the affiliated competitive service provider to achieve the separation required by subsection d above.

7. In the event that a competitive service provider's services are terminated for any reason other than a customer's decision to transfer to a different supplier, the competitive service provider shall provide notice of the termination at least 30 days prior to the next meter read date that service to the customer will be terminated to the local distribution company by means of the appropriate standardized electronic transaction, or EDI. See 20 VAC 5-311-20 A 15, 20 VAC 5-311-30 A 5, and 20 VAC 5-311-30 B 5 for related provisions.

C. Competitive service providers shall be subject to the following general requirements:

1. Each person seeking to engage in the activities of a competitive service provider shall obtain a license from the State Corporation Commission prior to commencing such activities.
2. A competitive service provider shall comply with all initial and continuing requirements of the State Corporation Commission's licensure process and any reasonable registration processes required by the local distribution company and the transmission provider. Should the Commission determine, upon complaint of any affected person or upon its own motion, that a competitive service provider has failed to comply with any of the requirements of this chapter, the State Corporation Commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the competitive service provider's license or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.
3. A competitive service provider shall adhere to standards for exchanging data and information in an electronic medium upon implementation of such standards as may be determined by the State Corporation Commission to be appropriate and shall comply on a continuing basis with such EDI requirements.
4. A competitive service provider providing electric service shall annually file a report with the State Corporation Commission's Division of Energy Regulation stating, to the extent feasible, fuel mix and emissions data on at least an annualized basis, or shall provide to the staff an explanation as to why it is not feasible to submit any portion of such data.
5. A competitive service provider shall retain customer billing and account records and complaint records for at least three years.
6. Each affiliated competitive service provider shall maintain separate books of accounts and records.

**20 VAC- 5-311-30. Local distribution companies.**

A. Each local distribution company shall comply with the following rules with respect to its relationship with competitive service providers:

1. The local distribution company shall provide service, information and products to all competitive service providers licensed in Virginia on terms and conditions as set forth in this chapter, as provided in applicable tariffs, and as approved by the State Corporation Commission as part of a pilot program.
2. The local distribution company shall not give undue preference to an affiliated competitive service provider over the interests of any other competitive service provider related to the provision of electric transmission, distribution, generation, or ancillary services, or natural gas supply or capacity. For purposes of this rule, “undue preference” shall mean a preference that is reasonably likely to affect adversely the development of effective competition.
3. The local distribution company shall only provide information related to the transmission, distribution or provision of electricity, ancillary services and/or natural gas supply or capacity to an affiliated competitive service provider that it makes available simultaneously, through an electronic bulletin board, to all other competitive service providers licensed to conduct business in Virginia.
4. The local distribution company shall, upon request by a competitive service provider, provide such competitive service provider with the addresses of eligible pilot customers on a non-discriminatory basis consistent with the local distribution company's pilot tariff as approved by the State Corporation Commission. No other customer information about eligible pilot customers shall be provided to competitive service providers unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by applicable federal and state statutes.
5. In the event the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer for any reason other than the customer's decision to transfer to a different competitive service provider, the local distribution company shall, within two business days, respond to the competitive service provider by an appropriate EDI transaction that will acknowledge (i) receipt of the competitive service provider's notice, and (ii) the date that the competitive service provider's service to the customer will terminate. See 20 VAC 5-311-20 A 15, 20 VAC 5-311-20 B 7 and 20 VAC 5-311-30 B 5 for related provisions.
6. Joint advertising and marketing shall be prohibited between the local distribution company and any competitive service provider unless made available to all competitive service providers upon the same price, terms, and conditions.
7. The local distribution company shall not condition the provision of any distribution services on the purchase of any other service or product from it or any of its affiliates.
8. With respect to affiliate transactions, the local distribution company shall abide by the following restrictions:

a. The local distribution company shall be compensated at the greater of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to an affiliated competitive service provider. An affiliated competitive service provider shall be compensated at the lower of fully distributed cost or market price for all services, facilities, and products provided to the local distribution company. If market price data are unavailable, services, facilities and products shall be compensated at fully distributed cost and the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable. Notification of a determination of the unavailability of market price data shall be filed with the Director of the State Corporation Commission's Division of Public Utility Accounting within 30 days of the transaction.

b. The local distribution company shall file quarterly, with the State Corporation Commission's Division of Public Utility Accounting, a report that shall, at a minimum, include: the amount and description of each transaction with an affiliated competitive service provider; accounts charged or credited; and support for the compensation basis used, i.e., market price or fully distributed cost. Documentation supporting all transactions between a local distribution company and its affiliated competitive service provider, including all fully allocated cost and market price data, as well as documentation supporting the unavailability of market price data, shall be maintained for a minimum of three years, and shall be provided to the staff of the State Corporation Commission upon request. This provision shall not affect any of the obligations of local distribution companies under Chapter 4 (§ 56-76 et seq.) of Title 56 of the Code of Virginia.

9. Neither the local distribution company nor a competitive service provider shall:

a. Suggest that the services provided by the local distribution company are of any different quality when electricity and/or natural gas is purchased from a particular competitive service provider; or

b. Suggest that the competitive energy services provided by a competitive service provider are being provided by a local distribution company rather than the competitive service provider.

10. The local distribution company may require reasonable financial security from the competitive service provider to financially safeguard the local distribution company and its customers from losses or additional costs incurred due to the non-performance of the competitive service provider. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, or other arrangements that may be mutually agreed upon by the local distribution company and the competitive service provider. However, the amount of such financial security shall not exceed two months of expected sales for the competitive service provider priced at the projected market price for generation as determined by the State Corporation Commission pursuant to § 56-583

of the Code of Virginia. Disagreements with respect to financial security shall be subject to the dispute resolution procedures established pursuant to 20 VAC 5-311-30 A 11.

11. The local distribution company shall establish, and file for State Corporation Commission approval, dispute resolution procedures to address complaints alleging violations of the provisions of this chapter. The local distribution company shall make such filing no later than 90 days prior to the commencement of the pilot program.

12. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action, may investigate and take such corrective actions as may be appropriate.

B. Each local distribution company shall comply with the following rules with respect to its relationship with its retail customers:

1. The local distribution company shall provide pilot program information and facilitate enrollment of pilot customers pursuant to pilot programs approved by the State Corporation Commission.

2. The local distribution company shall accept enrollments until the maximum number of customers that can participate in the customer choice pilot program has been enrolled by competitive service providers pursuant to 20 VAC 5-311-20 A 3.

3. The local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers who do not select a competitive service provider and to customers who chose a competitive service provider but whose service is terminated at the behest of the customer or by the competitive service provider for any reason during the pilot program period.

4. A local distribution company shall transfer a pilot customer's service to a competitive service provider or between competitive service providers only in accordance with the requirements of this chapter. Upon receipt of an enrollment request from a competitive service provider, the local distribution company shall within one business day send written notice to the customer advising of the enrollment request and the date that the competitive service provider's service will begin. In the event the local distribution company is advised of an unauthorized enrollment, the local distribution company shall stop the enrollment process until the matter is resolved pursuant to the competitive service provider's dispute resolution procedures. The local distribution company also shall promptly notify the Commission of the customer's allegation, the approximate date of the alleged unauthorized enrollment, the identity of the competitive service provider, and the name of the customer whose enrollment was allegedly unauthorized. See 20 VAC 5-311-20 A 3 b for a related provision.



5. In the event that the local distribution company is notified by a competitive service provider that a customer's service will be terminated for any reason other than a customer's decision to transfer to a different competitive service provider, the local distribution company, in addition to responding to the competitive service provider as required by 20 VAC 5-311-30 A 5, shall send written notification to the customer within five business days that it was so informed and describe the customer's opportunity to select a new supplier. The local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company will supply the customer's generation. See 20 VAC 5-311-20 A 15, 20 VAC 5-311-20 B 7, and 20 VAC 5-311-30 A 5 for related provisions.

6. Pilot program customer deposits held or collected by local distribution companies shall be for only those services provided by the local distribution company to customers participating in the pilot program.

7. Changes to terms and conditions concerning customer disconnection for non-payment shall be set forth in each local distribution company's pilot tariff approved by the State Corporation Commission.

#### **20 VAC 5-311-40. Aggregators.**

A. Each person seeking to act as an aggregator shall obtain a license from the State Corporation Commission prior to conducting business as an aggregator in the Commonwealth.

B. An aggregator shall abide by the following requirements as applicable:

1. A competitive service provider aggregator who is also the competitive service provider for one or more customers shall comply with all of the rules of this chapter applicable to competitive service providers with respect to such customers.

2. An aggregator shall use advertising and solicitation materials that contain accurate, understandable information, including information regarding pricing, and any other terms and conditions of service that will enable the prospective customer to make an informed choice. All advertising and solicitation materials regarding price or cost of the competitive energy services shall comply with the requirements of 20 VAC 5-311-20 A 2.

3. An aggregator shall disclose in writing to prospective customers and include in each written contract the nature of the service to be provided, the length of the contract, the fees or prices that will be charged for such service, provisions for termination of the contract by the customer and the aggregator, and any other terms that are necessary for the prospective customer to make an informed choice in selecting an aggregator.

4. An aggregator shall provide to each customer a written contract, which may be hand-delivered, mailed, or electronically transmitted. A customer or prospective customer

shall be deemed to have received a contract on the date the contract is hand-delivered or three business days after the date the contract was mailed or electronically transmitted.

5. An aggregator shall provide a period of three days during which a customer may withdraw from the contract without incurring any penalty or other obligations. Such period shall commence with the customer's receipt of a written contract. See 20 VAC 5-311-40 B 4 for a related provision.

6. An aggregator who acts as both a buyer aggregator and a competitive service provider aggregator shall, prior to contracting with customers, provide written notice to the customers or prospective customers that the aggregator is, or may be, compensated by one or more competitive service providers.

7. When any aggregator engages in any activity or performs a function that the competitive service provider would have provided absent the aggregator's involvement, the aggregator shall comply with all rules of this chapter that would be applicable to the competitive service provider when engaging in the activity or providing the function. For example: (i) if such aggregator uses advertising and marketing materials supplied by the competitive service provider or that promote a particular competitive service provider's services, the aggregator must comply with 20 VAC 5-311-20 A 1 and 20 VAC 5-311-20 A 2; (ii) if such aggregator enrolls the customers or prospective customers in a particular program on behalf of the competitive service provider, the aggregator shall comply with 20 VAC 5-311-20 A 3, 20 VAC 5-311-20 A 4, 20 VAC 5-311-20 A 5, 20 VAC 5-311-20 A 6, and 20 VAC 5-311-20 C 2.

#### **20 VAC 5-311-50. Licensure of competitive service providers and aggregators.**

A. Each person applying for a license to conduct business as a competitive service provider or an aggregator shall file the original application with 15 copies thereof with the Clerk of the State Corporation Commission. Each application shall include the following:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof; e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.
3. Name and business addresses of all corporate officers and directors, partners, LLC members, as appropriate.
4. a. Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location or locations.

- b. A list of states in which the applicant or an affiliate conducts business related to electricity or natural gas, the names under which such business is conducted, and a description of the businesses conducted.
5. Names of the applicant's affiliates and subsidiaries. If available, applicant shall satisfy this requirement by providing a copy of its most recent form 10K, Exhibit 21 filing with the Securities and Exchange Commission.
6. Disclosure of any affiliate relationships with local distribution companies or competitive service providers, or both, that conduct business in Virginia, and any agreements with the affiliated local distribution company that affect the provision of competitive energy services within the Commonwealth of Virginia.
7. Telephone number of the customer service department or the title and telephone number of the customer service contact person.
8. Name, title, address, and telephone number, facsimile (fax) number, and e-mail address of the company liaison with the State Corporation Commission.
9. Name, title, and address of registered agent in Virginia for service of process.
10. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the State Corporation Commission; if a domestic corporation, a copy of the certificate of incorporation from the State Corporation Commission.
11. Sufficient information to demonstrate financial fitness commensurate with the service or services proposed to be provided. Applicant shall submit the following information related to general financial fitness:
  - a. Applicant's audited balance sheet and income statement for the most recent fiscal year. Published financial information such as 10Ks and 10Qs should be provided, if available.
  - b. Proof of a minimum bond rating (or other senior debt) of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. In lieu of such minimum bond rating or guarantee, submit other evidence that will demonstrate the applicant's financial responsibility to the State Corporation Commission.
12. Identification of the geographic area or areas, the name of the local distribution company that is certificated to provide service in the area or areas and the associated pilot program or programs in which the applicant proposes to provide service, the type of service or services it proposes to provide, the class of customers to which it proposes to provide such services, and, if applying to sell electricity or natural gas (or both) at retail and, if feasible, the sources of supply it intends to use.

13.
  - a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation; and (ii) felony convictions within the previous five years, which relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.
  - b. Disclosure of whether any application for license or authority to conduct the same type of business has ever been denied or whether any license or authority issued to it or an affiliate has ever been suspended, revoked or sanctioned.
  - c. If applicant has engaged in the provision of electricity or natural gas, or both, in Virginia or any other state, a report of all instances of violations of reliability standards that were determined to be the fault of the applicant, including unplanned outages, failure to meet service obligations, and any other deviations from reliability standards during the previous three years. The report shall include, for each instance, the following information: a description of the event, its duration, its cause, the number of customers affected, any reports, findings or issuances by regulators or electric and natural gas system reliability organizations relating to the instance, any penalties imposed, and whether and how the problem has been remedied.
14. A \$250 pilot registration fee payable to the Clerk of the State Corporation Commission shall accompany each initial application. (No annual registration fee will be required for pilot programs.)
15. Sufficient information to demonstrate technical fitness commensurate with the service or services to be provided, to include:
  - a. The applicant's experience.
  - b. Identity of applicant's officers directly responsible for operations in the business to be conducted in Virginia and his or her experience. For example, an officer's experience in the generation of electricity, procurement of electricity or natural gas (or both), and the provision of energy services to retail customers.
  - c. If applying to sell electricity or natural gas, or both, at retail, documentation of any membership or participation in regional reliability councils or regional transmission organizations.
  - d. If applying to sell electricity or natural gas, or both, at retail, information concerning access to generation, supply and reserves. Such information should specify to the extent possible the expected sources of electricity or electricity procurement practices that will be used to support retail sales of electricity in

Virginia. For natural gas pilot participants, information regarding pipeline capacity and storage arrangements, including assurances that such suppliers will be able to meet the requirements of their essential human needs customers.

16. Applicants other than aggregators, unless the aggregator will actually sell competitive energy services, shall file a copy of its dispute resolution procedure for approval by the State Corporation Commission.

B. The license application shall be signed by an officer with appropriate authority under penalty of perjury that all information supplied on the application form is true and correct, and that, if licensed, applicant will abide by all applicable regulations of the State Corporation Commission.

C. Each person applying for a license to conduct business as a competitive service provider shall simultaneously serve a copy of its application upon each local distribution company located within the service territory or territories where the competitive service provider intends to operate.

D. Upon receipt of an application for a license to conduct business as a competitive service provider, the State Corporation Commission shall enter an order providing for notice and an opportunity for a hearing on the application.

E. A license to conduct business as a competitive service provider or an aggregator granted under this section shall expire upon the termination of the pilot program unless otherwise prescribed by order of the State Corporation Commission. The State Corporation Commission will consider extending or converting licenses issued under this chapter to allow licensed entities to continue to provide service after the termination of the pilot programs.

F. If any application fails in any respect to be complete, the application will not be regarded as filed. The State Corporation Commission will take no action on any application until deemed complete and filed.

#### **20 VAC 5-311-60. General provisions.**

A. Any request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. Each local distribution company, competitive service provider, and aggregator shall comply with the standards for billing information set forth in § 56-592 D 1, § 56-592 D 2, and § 56-592 D 4 of the Code of Virginia and with such standards that may be established by the State Corporation Commission pursuant to § 56-592 D of the Code of Virginia.

C. A local distribution company, a competitive service provider, or an aggregator shall bear the responsibility for meter reading and billing as provided or allowed by law or as required by order of the State Corporation Commission, or both.

D. Where one consolidated bill is issued for all electric and/or natural gas services, a customer payment shall be applied to the charges of the local distribution company, the competitive service provider or providers, or tax liability, as designated by that customer. If the customer does not so designate, the payment shall be applied on a prorated basis to non-disputed outstanding charges for service provided by the local distribution company, the competitive service provider or providers, and tax liability in proportion to the total amount of each such item. Payments shall not be applied to any arrearages that existed prior to the customer's enrollment in the pilot program until all outstanding charges incurred during the pilot program period and owed to competitive service provider or providers, the local distribution company, or tax liability have been satisfied.

E. A competitive service provider and an aggregator shall: (i) inform the State Corporation Commission of any change in its name, address and telephone numbers within 30 days of the change or changes, and (ii) update any information contained in its application that has changed, within 30 days of such change, regarding any (1) civil, criminal, or regulatory sanctions or penalties imposed within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation; and (2) felony convictions within the previous five years, which relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.

F. The State Corporation Commission shall have the right at all times to inspect the books, papers, records and documents of any person to which these rules apply, other than a retail customer, and to require such persons to provide special reports and statements, under oath at the discretion of the State Corporation Commission, concerning their businesses subject to these rules.

G. These rules may be enforced by the State Corporation Commission by any means authorized under any applicable law or regulation. Enforcement actions may specifically include, without limitation, the refusal to issue any license for which application has been made, and the refusal to renew or the revocation or suspension of any license previously granted. Any person aggrieved by a violation of these regulations may pursue any civil relief that may be available under state or federal law, including, without limitation, private actions for enforcement of these regulations, without regard to or first pursuing the remedies available from the Commission hereunder.